

CHAPTER 2**PERMANENCY FLOWCHART, TIMELINE, AND JUDICIAL DETERMINATIONS****TABLE OF CONTENTS**

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NOTICE

Orders that are not timely issued, or that do not include the “reasonable efforts” and other findings required under Title IV-E of the Social Security Act, may subject the county and/or state to negative financial consequences related to foster care funding (see Chapter 1.05 – “Ensuring Continued Funding – The Court’s Role”).

2.01 PERMANENCY FLOWCHART

PERMANENCY TIMELINE FOR CHILDREN IN OUT-OF-HOME PLACEMENT
(Timeline shows maximum days for each event)

CHIPS Proceeding

0	3	3-13	28	30	53	63	103	123	180	193	283	335*	365*	(Permanency Proceeding Commenced)
Child Removed from home	Petition Served ¹ & EPC Hearing ²	Admit/Deny Hearing ⁴ (ADH)	Sched. Order Filed ³	Out of Home Place. Plan Filed ⁶	Pretrial Hearing ⁷	Trial ⁸	Disp. Rev. Hearing if Adj. & Disp. at ADH ¹¹	Adjud. Dispo. ¹⁰	Perm. Progress. Rev. Hearing ¹²	Disp. Review Hearing ¹¹	Disp. Rev. Hearing ¹¹	Perm. Petition Filed		

*If multiple CHIPS petitions filed for the child over the past 5 years, and child has already been in out-of-home placement for at least 365 days, then if the agency establishes compelling reason the court may extend the commencement of the permanency proceeding (the Admit/Deny Hearing on the permanency petition) for up to 6 months.

If child not removed from home: Protective Services Case Plan³

Permanency Proceeding

Termination of Parental Rights (TPR)	335	365	415	425	485	575
	TPR Petition Filed ¹³	Admit/Deny Hearing ¹⁴	Pretrial Hearing ¹⁵	Trial ¹⁶ Comm.	Findings Decision Filed ¹⁷	Post-TPR Review Hearing ¹⁸
Transfer of Permanent Legal and Physical Custody to a Relative (TLC)	335	365	415	425	485	575
	TLC Petition Filed ¹⁹	Admit/Deny Hearing ²⁰	Pretrial Hearing ²¹	Trial ²² Comm.	Findings Decision Filed ²³	Post-TLC Review Hearing ²⁴
Long Term Foster Care (LTFC)	335	365	415	425	485	575
	LTFC Petition Filed ²⁵	Admit/Deny Hearing ²⁶	Pretrial Hearing ²⁷	Trial ²⁸ Comm.	Findings Decision Filed ²⁹	Annual Review Hearing ³⁰
Foster Care for a Specified Period of Time (FSPT)	335	365	415	425	485	575
	FSPT Petition Filed ²⁵	Admit/Deny Hearing ²⁶	Pretrial Hearing ²⁷	Trial ²⁸ Comm.	Findings Decision Filed ²⁹	Annual Review Hearing ³⁰
Guardianship and Legal Custody to Comm. of Human Services (GLCHS)	335	365	415	425	485	575
	Consent To adopt Filed ³¹				Findings Filed ³²	90-Day Review

CHIPS Proceeding

- 1 **Summons and Petition:** For a child in out-of-home placement, served at or before EPC hearing. For a child at home, served at least 3 days prior to Admit/Deny Hearing. (RJPP 32.02, subd. 5(a)).
- 2 **EPC:** Within 72 hours of child's removal from home, excluding Saturdays, Sundays, and legal holidays (RJPP 30.01, subd. 1; Minn. Stat. § 260C.178, subd. 1(a))
- 3 **Protective Services Cased Plan** (plan that is filed when child has not been removed from home): Filed by social services at same time as CHIPS petition (RJPP 37.04(a); Minn. Stat. § 260C.178, subd. 10).
- 4 **Admit/Deny Hearing (ADH):** If all parties agree, ADH may be combined with EPC. If child removed from home, ADH within 10 days of EPC hearing (RJPP 34.02, subd. 1); if child not removed from home, ADH no sooner than 5 days and no later than 20 days after service of Summons and Petition on parties (RJPP 34.02, subd. 2); if Indian child, ADH at least 10 days after ICWA notice received by tribe and tribe may request additional 20 days (best practice is to schedule for day 30) (RJPP 34.02, subd. 1(d))
- 5 **Scheduling Order:** Issued within 15 days of the Admit/Deny Hearing and must include dates for filing of permanency petition and Admit/Deny Hearing on Permanency Petition. (RJPP 6.02)
- 6 **Out of Home Placement Plan:** Filed by social services agency within 30 days of child's court-ordered placement. (RJPP 37.02, subd. 2; Minn. Stat. § 260C.212, subd 1(b))
- 7 **Pretrial:** At least 10 days prior to trial (RJPP 36.01)
- 8 **Trial:** Commenced within 60 days of EPC or Admit/Deny, whichever is earlier; held on consecutive days; completed within 30 days of commencement (RJPP 39.02, subd. 1(a))
- 9 **Findings/Adjudication Order:** Within 15 days of conclusion of testimony, including time for filing briefs (may extend 15 days for good cause) (RJPP 39.05, subd. 1, 2; RJPP 40.01)
- 10 **Disposition Order:** Preferably issued on same day as adjudication finding, but no later than 10 days from adjudication order (RJPP 41.02)
- 11 **Disposition Review Hearing:** When disposition is custody to agency, review hearing at least every 90 days after disposition is ordered; when disposition is protective supervision, review hearing at least every 6 months (RJPP 41.06, subd. 1)
- 12 **Permanency Progress Review Hearing:** For child under age 8 (and any older or younger siblings), commenced not later than 180 days after court-ordered placement (RJPP 42.01, subd.5(a))

Permanency Proceeding

Termination of Parental Rights (TPR) Proceeding (Minn. Stat. § 260C.201, subd. 11(d)(2) and RJPP 42.08)

- 13 **TPR Petition:** Petition must be filed not later than 30 days prior to Admit/Deny Hearing (by month 11) (see exception*) (RJPP 42.04; Minn. Stat. § 260C.201, subd. 11(b))
- 14 **Admit/Deny Hearing:** For any child (regardless of age) who remains in foster care, the ADH must be commenced not later than 12 months after court-ordered placement (see exception*) (Minn. Stat. § 260C.201, subd. 11(a); RJPP 42.04(b), and RJPP 42.01, subd. 5(b))
- 15 **Pretrial Hearing:** At least 10 days prior to trial (RJPP 36.01)
- 16 **Trial:** Commenced within 60 days of the Admit/Deny Hearing; held on consecutive days; completed within 30 days of commencement (RJPP 39.02, subd. 1(c); Minn. Stat. § 260C.201, subd. 11 (c))
- 17 **Findings and Decision:** Within 15 days of conclusion of testimony, including time for filing briefs (may extend 15 days for good cause) (RJPP 39.05, subd. 1)
- 18 **Post-TPR Review Hearing:** At least every 90 days following TPR decision until adoption finalized. (RJPP 42.08, subd. 5) If adoption not finalized within two years, can modify disposition to state ward for LTFC (RJPP 42.11, subd 3(a))

Transfer of Permanent Legal and Physical Custody to a Relative (TPLPC) Proceeding (Minn. Stat. § 260C.201, subd. 11(d)(1) and RJPP 42.07)

- 19 **TPLPC Petition:** Petition must be filed not later than 30 days prior to Admit/Deny Hearing (by month 11) (see exception*) (RJPP 42.04; Minn. Stat. § 260C.201, subd. 11(b))
- 20 **Admit/Deny Hearing:** For any child (regardless of age) who remains in foster care, the ADH must be commenced not later than 12 months after court-ordered placement (see exception*) (Minn. Stat. § 260C.201, subd. 11(a); RJPP 42.04(b), and RJPP 42.01, subd. 5(b))
- 21 **Pretrial Hearing:** At least 10 days prior to trial (RJPP 36.01)
- 22 **Trial:** Commenced within 60 days of the Admit/Deny Hearing; held on consecutive days; completed within 30 days of commencement (RJPP 39.02, subd. 1(c); Minn. Stat. § 260C.201, subd. 11 (c))
- 23 **Findings and Decision:** Within 15 days of conclusion of testimony, including time for filing briefs (may extend 15 days for good cause) (RJPP 39.05, subd. 1)
- 24 **Post-TPLPC Review Hearing:** Not required unless judge so orders; however, best practice is to order review hearings for 30-60 days to ensure smooth transition and needs of child are being met (RJPP 42.07, subd.7)

Long Term Foster Care (LTFC) and Foster Care for Specified Period of Time (FSPT) Proceedings (Minn. Stat. § 260C.201, subd. 11(d)(3) and (4) and RJPP 42.11 and 42.12)

- 25 **LTFC or FSPT Petition:** Petition must be filed not later than 30 days prior to Admit/Deny Hearing (by month 11) (see exception*) (RJPP 42.04; Minn. Stat. § 260C.201, subd. 11(b))
- 26 **Admit/Deny Hearing:** For any child (regardless of age) who remains in foster care, the ADH must be commenced not later than 12 months after court-ordered placement (see exception*) (Minn. Stat. § 260C.201, subd. 11(a); RJPP 42.04(b), and RJPP 42.01, subd. 5(b))
- 27 **Pretrial Hearing:** At least 10 days prior to trial (RJPP 36.01)
- 28 **Trial:** Commenced within 60 days of the Admit/Deny Hearing; held on consecutive days; completed within 30 days of commencement (RJPP 39.02, subd. 1(c); Minn. Stat. § 260C.201, subd. 11 (c))
- 29 **Findings and Decision:** Within 15 days of conclusion of testimony, including time for filing briefs (may extend 15 days for good cause) (RJPP 39.05, subd. 1)
- 30 **Post-LTFC Review Hearing:** At least annually until child discharged from foster care; best practice is more frequent hearings for older youth age 17+ who are about to be discharged from foster care to ensure a smooth transition and understand details of adult life from checking accounts to rent to groceries to basic necessities (RJPP 42.11, subd. 4; RJPP42.12)

Guardianship and Legal Custody to Commissioner of Human Services (Minn. Stat. § 260C.201, subd. 11(d)(5) and RJPP 42.09 and 42.10)

- 31 **Consent to Adopt by an identified adoptive home:** A permanency petition is not filed but, instead, the parent signs a consent to adopt by an adoptive parent that has been agreed to by the agency. Unless the matter is governed by ICWA, the consent is irrevocable unless the child's parent didn't receive notice of the irrevocable nature of the consent or unless there is fraud. Acceptance of the consent does not automatically terminate parental rights, but it does vest with the commissioner of human services all legal authority regarding the child, including guardianship and legal custody of the child as if the child were a state ward after termination of parental rights. If an adoption is not finalized within 12 months of the execution of the consent to adopt, the commissioner or agency shall pursue adoptive placement in another home unless the commissioner certifies that the failure to finalize is not due to either an action or a failure to act by the prospective adoptive parent.
- 32 **Findings and Decision:** Within 15 days of the consent (may extend 15 days for good cause), court must issue findings and order transferring guardianship and legal custody. (RJPP 42/10)
- 33 **Post-Consent Review Hearing:** At least every 90 days following consent until adoption finalized. (RJPP 42.09, subd. 3) If adoption not finalized within two years, can modify disposition to state ward for LTFC (RJPP 42.11, subd. 3(a))

* = **Exception:** If multiple CHIPS petitions filed for child over past 5 years, and child has been in foster care for 12 months, then if agency shows compelling reasons court may extend up to 6 months.

2.02 PERMANENCY TIMELINE

Child Protection Process Timeline: Removal to Permanency

EVENT	RELATED EVENTS/OTHER INFORMATION
Child Removed From Home (Voluntary or Involuntary)	A child may not be removed from home except by court order or by a peace officer under certain conditions (<i>RJPP 28; Minn. Stat. § 260C.175, subd. 1</i>). The 12-month permanency clock begins on the date of the court-ordered placement, which may be different from the date of actual removal from home (<i>RJPP 42.01, subd. 3(a); Minn. Stat. § 260C.201, subd. 11(a); 42 U.S.C. § 675(5)(F)(i)</i>). If the child is in voluntary placement, permanency clock begins 60 days after voluntary placement (<i>RJPP 42.01, subd. 3(b)</i>).
CHIPS Petition Filed and Summons and Petition Served	If the child is removed involuntarily, a CHIPS petition must be filed (<i>RJPP 33.05; Minn. Stat. § 260C.141, subd. 1</i>) and a Summons and Petition must be served upon both of the child's parents and all other parties, participants and attorneys at or prior to EPC hearing (<i>RJPP 32.02, subd. 5(a)</i>). ¹ If the child is in voluntary placement, CHIPS petition must be served and filed within 90 days of placement (<i>Minn. Stat. § 260C.141, subd. 2(a); Minn. Stat. § 260C.212, subd. 8; RJPP 44.02</i>). If ICWA case, service must take place 10 days prior to hearing; tribe may request up to 20 additional days to prepare for the hearing (<i>RJPP 32.06; 25 U.S.C. § 1912</i>). <i>Comment: ICWA supersedes state statutes and rules.</i>
Child Protective Services Case Plan (for child not removed from home)	If the child is not in out-of-home placement, a child protective services case plan must be served and filed with the CHIPS petition unless the agency includes a statement stating why it will be filed at a later date (<i>RJPP 37.04(a); Minn. Stat. § 260C.201, subd. 6(b)</i>). The court may approve the plan based on contents of CHIPS petition, and implementation of approved plan may be basis for reasonable efforts determination (<i>RJPP 37.04(b); Minn. Stat. § 260C.201, subd. 6(c)</i>). <i>Comment: The Court cannot order the case plan without a hearing, unless the parent agrees.</i>
Emergency Protective Care Hearing	The Emergency Protective Care (EPC) Hearing must be held within 72 hours ² of the child's removal from home (<i>RJPP 30.01, subd. 1; Minn. Stat. § 260C.178, subd. 1(a)</i>). The EPC Hearing may be continued for up to 8 days if the court makes the findings required under the Rules (<i>RJPP 30.01, subd. 2</i>).
Admit/Deny Hearing	If the child is in out-of-home placement, the Admit/Deny Hearing on a CHIPS petition must be held within 10 days of the EPC Hearing (<i>RJPP 34.02, subd. 1(a)</i>). Upon agreement of the parties, the Admit/Deny Hearing may be combined with the EPC Hearing (<i>RJPP 34.02, subd. 1(a)</i>). When the child is at home, the Admit/Deny Hearing must be held no sooner than 5 days and not later than 20 days after the parties have been served with the summons and petition (<i>RJPP 34.02, subd. 2(a)</i>).

¹ Diligent efforts to identify and locate both parents of child are required as soon as the child enters foster care. *Minn. Stat. § 260C.150*. As soon as possible, but no later than 30 days after child's out-of-home placement, the agency must identify the child's maternal and paternal relatives and notify them of the child's out-of-home placement and the option to become a placement resource for the child and the right to be involved in planning for the child's welfare and permanency. *Minn. Stat. § 260C.212 subd. 5*.

² When calculating the 72-hour period, the day the child was removed from home and any Saturday, Sunday, and legal holiday is not counted. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs to the end of the next day that is not a Saturday, Sunday, or legal holiday. *RJPP 4.01*.

EVENT	RELATED EVENTS/OTHER INFORMATION
Scheduling Order	A scheduling order setting forth the dates or timeline for all events must be issued in every case at or within 15 days of the Admit/Deny Hearing (<i>RJPP 6.02, subd. 1</i>). <i>Comment: The Scheduling Order template is located on CourtNet under "Forms."</i>
Out-of-Home Placement Plan Filed and Served	If the child is in out-of-home placement, the Out-of-Home Placement Plan must be served and filed within 30 days of the child's court-ordered removal (<i>RJPP 37.02, subd. 2; Minn. Stat. 260C.212, subd. 1(a); Minn. Stat. § 260C.178, subd. 7(a)</i>). The court may approve the plan based upon the contents of the CHIPS petition, and implementation of approved plan may be basis for reasonable efforts determination (<i>Minn. Stat. § 260C.178, subd. 7(b); RJPP 37.02, subd. 4</i>). <i>Comment: The Court cannot order the case plan without a hearing, unless the parent agrees.</i>
CHIPS Pretrial Hearing	A Pretrial Hearing is required in every case where a denial has been entered so that settlement may be attempted and/or issues narrowed for trial (<i>RJPP 36.02</i>). A Pretrial Hearing must be held at least 10 days prior to the trial (<i>RJPP 36.01</i>).
CHIPS Trial	A trial in a CHIPS matter must be commenced within 60 days of the date of the EPC Hearing or Admit/Deny Hearing, whichever is earlier (<i>RJPP 39.02, subd. 1(a)</i>). If the court makes the findings required under the Rules, the court may extend the commencement of the trial (<i>RJPP 39.02, subd. 2</i>). Trial must be concluded within 30 days of commencement and should be over consecutive days when possible (<i>RJPP 39.02, subd. 1</i>). In cases of egregious harm or simultaneous criminal case, county attorney determines whether criminal or juvenile case proceeds first (<i>RJPP 39.02, subd. 1(d)</i>).
CHIPS Findings/Order	The court must issue its findings and order within 15 days of the conclusion of testimony (not conclusion of oral arguments), during which time court may request simultaneous written briefs and proposed orders (<i>RJPP 39.05, subd. 1</i>). The time for issuing the findings and order may be extended for up to 15 days if the court finds good cause exists and that the continuance is in the best interests of the child (<i>RJPP 39.05, subd. 1</i>).
Dismiss Petition or Adjudication	If the court finds that the statutory grounds set forth in the CHIPS petition have not been proved, the court must dismiss the petition (<i>RJPP 39.05, subd. 2</i>). If the court finds that the statutory grounds set forth in the CHIPS petition have been proved, the court may adjudicate the child as in need of protection or services (<i>RJPP 40.01</i>) or may withhold adjudication for a period not to exceed 90 days from date of finding that the statutory grounds are proved (<i>RJPP 40.02</i>). If the court withholds adjudication, within 90 days the court must conduct a hearing to review the parents' compliance with the court's order and either dismiss the petition if the parents complied or enter adjudication and order disposition (<i>RJPP 40.02, subd. 2</i>).
Disposition Hearing	The court shall conduct a Disposition Hearing and issue a disposition order the same day as the adjudication, to the extent practicable, but not later than 10 days after adjudication (<i>RJPP 41.02</i>). The order must place the child with the custodial or noncustodial parent under protective supervision with the agency, order a trial home visit with the custodial parent, transfer legal custody to the agency for placement in foster care, or other orders consistent with the statute (<i>Minn. Stat. § 260C.201, subd. 1</i>).
Disposition Review Hearings	When the child is in foster care or with a noncustodial parent, in-court review hearings must occur at least every 90 days following disposition (<i>RJPP 41.06, subs. 1, 2</i>). When the child is with a custodial parent under protective supervision, in-court review hearings must occur at least every 6 months following disposition (<i>RJPP 41.06, subd. 1</i>). Purpose is to determine whether the agency has made reasonable or active efforts to reunify the child with the parent, to review parent's progress on case plan, and to correct any problems with services and address barriers to reunification. It also affords an opportunity to ensure parent understands consequence to both parent and child of failure to comply with case plan (<i>RJPP 41.06, subd. 2</i>).

EVENT	RELATED EVENTS/OTHER INFORMATION
<p>Permanency Progress Review Hearing (for child under age 8 and sibling groups)</p>	<p>For a child under age 8 at the time the CHIPS petition was filed, a Permanency Progress Review Hearing (different from a Permanent Placement Determination Hearing) must occur within 180 days of court-ordered placement to review progress on case, parent's progress on out-of-home placement plan, and agency's provision of services (<i>RJPP 42.01, subd. 1(a); Minn. Stat. 260C.201, subd. 11a(a)</i>). If the court determines that the parent is maintaining regular contact with the child and complying with the court-ordered case plan, the court may either (1) return the child home if the conditions which lead to the out-of-home placement have been resolved and it is safe for the child to return, or (2) continue the child in out-of-home placement for up to an additional six months (<i>RJPP 42.03, subd. (b)(1); Minn. Stat. § 260C.201, subd. 11a(c)(1)</i>). If the court determines that the parent is not complying with case plan or is not maintaining regular contact with the child, the court may order the agency to develop a permanent plan for the child away from the parent and to file a permanency petition to support an order the permanent placement plan (<i>RJPP 42.03, subd. (b)(2); Minn. Stat. § 260C.201, subd. 11a(c)(2)</i>). The court's Order must be issued within 15 days of the hearing (<i>RJPP 10.01</i>).</p>
<p>Permanency Petition Filed (for child under age 8)</p>	<p>If the court determines at the conclusion of the Permanency Progress Review Hearing that the parent is not complying with case plan or is not maintaining regular contact with the child who is under age 8 at the time the CHIPS petition was filed, the court may order the agency to develop a permanent plan for the child away from the parent and to file a permanency petition within 30 days (<i>RJPP 42.03, subd. (b)(2); Minn. Stat. § 260C.201, subd. 11a(c)(2)</i>). At the court's discretion, the Permanency Progress Review Hearing may apply to the child's older siblings.</p>
<p>Permanency Petition Filed (for any child who has not returned home)</p>	<p>For any child who has not returned home, unless the agency recommends return of child to parent or legal custodian, a permanency petition must be filed not later than 30 days prior to Permanent Placement Determination Hearing (also known as the Admit/Deny Hearing) (<i>RJPP 42.04(a); Minn. Stat. § 260C.201, subd. 11(b)</i>). In other words, the permanency petition must be filed by month 11.</p>
<p>Permanent Placement Determination Hearing (Admit/Deny Hearing on Permanency Petition (for any child who remains in out-of- home placement at 12 months)</p>	<p>This Permanent Placement Determination Hearing (also known as the Admit/Deny Hearing) must be commenced on or before the 365th day after the child's court-ordered removal from home. (<i>RJPP 42.04(b); Minn. Stat. § 260C.201, subd. 1(a)</i>).</p>
<p>Permanency Petition Trial</p>	<p>If a denial to the permanency petition is entered, trial on the permanency petition must be commenced within 60 days of the denial (<i>RJPP 39.02, subd. 1(c); Minn. Stat. § 260C.201, subd. 11(c)</i>).</p>
<p>Permanency Order Issued by Court</p>	<p>The court must issue its findings and order within 15 days of the conclusion of testimony (not conclusion of oral arguments), during which time court may request simultaneous written briefs and proposed orders (<i>RJPP 39.05, subd. 1</i>). The time for issuing the findings and order may be extended for up to 15 days if the court finds good cause exists and that the continuance is in the best interests of the child (<i>RJPP 39.05, subd. 1</i>). If the court finds that a termination of parental rights (TPR) petition has not been proven or that TPR is not in the child's best interests, and the child has been in placement 15 of the last 22 months, the court must order the child returned to the care of the parent unless the court finds compelling reasons why the child should remain out of the care of the parent (<i>Minn. Stat. § 260C.312(b)</i>). If the court orders the child returned to the care of the parent, the court may order a trial home visit, protective supervision, or monitoring (<i>RJPP 42.06; Minn. Stat. 260C.312(b)</i>). When the court orders protective supervision, in-court review hearings must be held at least every six (6) months (<i>RJPP 41.06, subd. 1</i>).</p>

EVENT	RELATED EVENTS/OTHER INFORMATION
<p>Post-Permanency Review following Termination of Parental Rights Decision</p>	<p>If the permanency decision is Termination of Parental Rights (TPR), a post-permanency review hearing must take place at least every 90 days to review progress towards adoption (<i>RJPP 43.08, subd. 5; Minn. Stat. § 260C.317, subd. 3(b)</i>).</p>
<p>Post-Permanency Review following Transfer of Legal Custody Permanency Decision</p>	<p>If the permanency decision is Transfer of Permanent Legal and Physical Custody to a Relative (TLC), juvenile court jurisdiction ends unless retained by the court to ensure that the transfer of custody is proceeding smoothly (<i>RJPP 42.07, subd. 2; Minn. Stat. 260C.201, subd. 11(d)(1)</i>). If the court retains jurisdiction, post-permanency review hearings will occur as ordered by the court (<i>RJPP 42.07, subds. 4, 7; Minn. Stat. 260C.201, subd. 11(d)(1)</i>). A family court file must be opened so that a copy of TLC order can be filed in the family court file and any future litigation regarding visitation, child support, etc., will be heard in the family court file and notice of any family court proceedings must be given to social services agency (<i>RJPP 42.07, subd. 7</i>).</p>
<p>Post-Permanency Review following Long Term Foster Care Decision</p>	<p>If permanency decision is Long-Term Foster Care (LTFC), in-court review hearings must take place at least annually to ensure child’s needs being met; if placement disrupts, return to court sooner. (<i>RJPP 42.05, subd. 2(e); Minn. Stat. § 260C.201, subd. 11(g)</i>).</p>

2.03 JUDICIAL DETERMINATIONS

Judicial Determinations and Hearing Requirements to Establish and Continue Title IV-E Reimbursement for Child Welfare Foster Care Placements

This chart provides a snapshot of the decisions judges must make, the time by which such decisions must be made, and the financial consequences if the decisions are not timely made.

INVOLUNTARY PLACEMENTS: Initial Determinations				
Judicial determination: Should child be involuntarily removed from home?				
If yes, find: "Placement is in the best interests of the child" <i>or</i> "Continued custody by the parent is contrary to the child's welfare" <i>and</i> one of the "reasonable efforts" findings				
Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
Continuation of residence in the home would be contrary to the welfare of the child <i>or</i> out-of-home placement is in the child's best interest; <i>and</i>	Continuation of the child in the custody of the parent is contrary to the child's welfare; <i>and</i>	In the first court order that sanctions the removal of the child.	In the ex parte order removing the child AND at the EPC or detention hearing.	No eligibility for <i>Title IV-E</i> reimbursement for entire length of placement. Note: This finding must coincide with the actual physical or constructive removal of the child from the care of the parent. ³
Reasonable efforts were made to prevent the placement; <i>or</i>	Reasonable or active ⁴ efforts were made to prevent placement; <i>or</i>	Within 60 days of the child's placement.	At the EPC hearing or detention hearing.	No eligibility for <i>Title IV-E</i> reimbursement for entire length of placement if finding does not occur within 60 days of the child's physical or constructive removal from the care of the parent.
Reasonable efforts to prevent the placement were not	Reasonable efforts to prevent placement were not required.	Within 60 days of the child's placement.	At the EPC or detention hearing; or upon a prima	No eligibility for <i>Title IV-E</i> reimbursement for entire length of

³ "Constructive removal" occurs when the parent has legal custody, but the child has been with a relative and the court orders emergency protective care with the county agency leaving the child in the physical care of the relative.

⁴ Active efforts to prevent the breakup of the Indian family are required under the Indian Child Welfare Act (ICWA), 25 U.S.C. 1912. Minn. Stat. § 260.012 and 260C.178, among others, require the court to make determinations of active efforts consistent with the ICWA.

INVOLUNTARY PLACEMENTS: Initial Determinations				
Judicial determination: Should child be involuntarily removed from home? If yes, find: "Placement is in the best interests of the child" or "Continued custody by the parent is contrary to the child's welfare" and one of the "reasonable efforts" findings				
Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
required.			facie determination that certain circumstances exist. ⁵	placement if finding does not occur within 60 days of the child's physical or constructive removal from the care of the parent.

VOLUNTARY PLACEMENTS: Initial Determination				
Judicial determination: Is the placement in the child's best interests? If yes, find: "Placement is in the best interests of the child"				
Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
Continued voluntary placement is in the best interests of the child.	Placement of the child in foster care is in the best interests of the child.	Within 180 days ⁶ of child's placement.	For voluntary placement of a child NOT in placement to access treatment and governed by <i>Minn. Stat. § 260D</i> , CHIPS petition required within 90 days of voluntary placement agreement; first hearing on CHIPS petition requires "best interests" determination. ⁷	No eligibility or reimbursement for <i>Title IV-E</i> reimbursement after 180 days.

⁵ *Minn. Stat. § 260.012* provides that reunification efforts are not required when: the parent has subjected the child to egregious harm; parental rights to another child of the parent have been involuntarily terminated; child is an abandoned child; parent's custodial rights to another child have been involuntarily transferred under chapter 260C; or the parent has been convicted of certain crimes toward another of the parent's children.

⁶ Under federal regulations, 180 days means 180 days, not six months.

⁷ See *Minn. Stat. § 260C.141, subd. 2*.

VOLUNTARY PLACEMENTS: Initial Determination				
Judicial determination: Is the placement in the child's best interests? If yes, find: <i>"Placement is in the best interests of the child"</i>				
Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
			For voluntary placement of a child in foster care to access treatment and governed by <i>Minn. Stat. §260D</i> , report to the court is due by day 165 of child's placement and finding of "best interests" by day 175.	

PERMANENCY: Ongoing determinations⁸

⁸ Title IV-E reimbursement is only available when the child is in foster care under the legal responsibility of the county social services agency OR a public agency with which the county or state agency has a Title IV-E agreement. Public agencies include trial social services and corrections.

Judicial determinations: Whether agency made reasonable efforts to finalize a permanent plan⁹ for all children in foster care and whether agency identified a “compelling reason” for the child to continue in placement past 12 or 14 month permanency hearing?
If yes, find: “The agency made reasonable efforts to finalize a permanent plan for all children in foster care” and “the agency identified a compelling reason for the child to continue in placement past 12 or 14 month permanency hearing.”

Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
1. Reasonable efforts have been made to finalize the permanent plan in effect for the child. ¹⁰	1A. For CHIPS cases, reasonable or active efforts have been made to reunify the child with the parent(s).	1A. Required 12 months from the date the child is considered to have entered foster care and every 12 months thereafter as long as the child continues in foster care.	1A. At the time of disposition hearing under <i>RJPP 41.05, subd 1</i> , and at least every 90 days as a part of the disposition review hearing required under <i>RJPP 41.06, subd. 2</i>	1A. Eligibility for <i>Title IV-E</i> reimbursement ceases at the beginning of the month following the missed determination required according to federal requirements. Eligibility is re-established by obtaining the determination. Eligibility is re-established as of the 1 st of the month in which the court determination is made. Note: On 1A, Minnesota requirement reflects state policy for more frequent review to ensure case plan progress.
	1B. For most TPR and permanency cases, reasonable or active efforts have been made to reunify the child with the parent(s).	1B. Same.	1B. At the admit/deny hearing on the permanency petition required at month 12 by <i>Minn. Stat. § 260C.201, subd. 11(a)</i> . <i>RJPP 34.03, subd. 3 or 4,</i>	1B. Same.

⁹ Under 45 CFR 1356.21, “permanent plan” means reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement. Permanent orders regarding a child under Minnesota law are similar and are contained at *Minn. Stat. §§ 260C.201subdivision 11* and 260C.141 subdivision 2a (2) (i) [for a child in placement due solely to disability].

¹⁰ Under 45 CFR 1355.20 the permanent plan for the child includes: reunification, adoption, guardianship (the equivalent of transfer of permanent legal and physical custody to a relative, permanent placement with a relative, or another planned permanent living arrangement, but only after documentation of a compelling reason why one of the other permanency options are (*continued from previous page*) not in the best interests of the child. Minn. Stat. § 260.012 (e) defines “reasonable efforts to finalize a permanent plan for the child” to include: reunification efforts, assessment of a noncustodial parent for day-to-day care, conducting a relative search, and when the child cannot return home, planning and finalizing a safe and legally permanent alternative home for th child, preferably through adoption or transfer of permanent legal and physical custody of the child.

PERMANENCY: Ongoing determinations⁸				
Judicial determinations: Whether agency made reasonable efforts to finalize a permanent plan ⁹ for all children in foster care and whether agency identified a “compelling reason” for the child to continue in placement past 12 or 14 month permanency hearing?				
If yes, find: “The agency made reasonable efforts to finalize a permanent plan for all children in foster care” and “the agency identified a compelling reason for the child to continue in placement past 12 or 14 month permanency hearing.”				
Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
			require a prima facie determination regarding whether the agency made reasonable efforts to reunify (when such efforts are required) based on the petition; final determination is made after trial on the merits.	
	1C. For cases NOT requiring reunification efforts, agency efforts to finalize permanent placement of the child are required together with court review of those efforts. ¹¹	1C. Same.	1C. At EPC hearing or permanency hearing required within 30 days or by 90 days at disposition in a termination of parental rights matter. ¹²	1C. Same.
	1D. When the child continues in foster care past 12 or 14 ¹³ months, a finding regarding the nature and extent of the agency’s reasonable or active efforts to reunify the child with the parent(s).		1D. 12 months or 14 months. (See footnote 5.)	1D. Same.

¹¹ See *Minn. Stat. § 260C.012 (e) and (f)*

¹² See *Minn. Stat. § 260C.178 subdivision 1 (e) (3)*.

¹³ *Minn. Stat. § 260C.201, subd. 11*, requires a permanency petition to be filed at month 11 and an Admit/Deny Hearing on the permanency petition at month 12 for all children who remain in court ordered foster placement. Children who are in voluntary placement must have a permanent hearing 14 months after entering placement. See *Minn. Stat. § 260C.201, subd. 11*, regarding how time period is calculated.

PERMANENCY: Ongoing determinations⁸				
Judicial determinations: Whether agency made reasonable efforts to finalize a permanent plan ⁹ for all children in foster care and whether agency identified a “compelling reason” for the child to continue in placement past 12 or 14 month permanency hearing?				
If yes, find: “The agency made reasonable efforts to finalize a permanent plan for all children in foster care” and “the agency identified a compelling reason for the child to continue in placement past 12 or 14 month permanency hearing.”				
Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
2. When the court orders the child to continue in foster care past 12 or 14 months, a finding of “compelling reasons” why the child continues in foster care. This is a one-time finding and does not have to repeated annually.	2. When the court orders or approves ¹⁴ the child’s stay in foster care past 12 or 14 months, the court must find “compelling reasons.” ¹⁵ This is a one-time finding and does not have to repeated annually.	2. At 12 or 14 months from the date the child entered placement.	2. At time of permanency hearing or anytime the court orders long-term foster care, foster care for a specified period of time or approves the child’s continuing in foster care past a total of 12 months.	2. Eligibility ceases in month after determination missed; eligibility may be re-established by entering finding. Eligibility is re-established as of the 1 st of the month in which the determination is made by the court.

PERMANENCY: Annual Review for Long Term Foster Care¹⁶
Judicial determinations: Whether agency made reasonable efforts to finalize a permanent plan for all children in foster care.
If yes, find: “The agency made reasonable efforts to finalize a permanent plan for all children in foster care.”

¹⁴ For a child in voluntary foster care for treatment under *Minn. Stat. § 260D*, the court may approve the continued voluntary arrangement; the placement does not become court ordered. See *Minn. Stat. § 260D*.

¹⁵ See various requirements at *Minn. Stat. § 260C.201, subd. 11; § 260C.312; § 260C.141, subd. 2a*; and definition at *§ 260C.007, subd. 8*.

¹⁶ Title IV-E reimbursement is only available when the child is in foster care under the legal responsibility of the county social services agency OR a public agency with which the county or state agency has a Title IV-E agreement. Public agencies include trial social services and corrections.

PERMANENCY: Annual Review for Long Term Foster Care¹⁶				
Judicial determinations: Whether agency made reasonable efforts to finalize a permanent plan for all children in foster care.				
If yes, find: <i>"The agency made reasonable efforts to finalize a permanent plan for all children in foster care."</i>				
Judicial Determination		Timing		Consequence of Failure to Comply with Federal Requirement State Requirements
Federal Requirements	State Requirements	Federal Requirements	State Requirements	
The court must review whether the agency made reasonable efforts to finalize the permanent plan for the child.	The court must review whether the agency made reasonable efforts to finalize the permanent plan for the child. ¹⁷	Annually determination as long as the child continues in foster care or other out-of-home placement.	Every 12 months as long as the child continues in long term foster care, foster care for a specified period of time, or other out-of-home placement. ¹⁸	Eligibility ceases in month after determination missed; eligibility may be re-established by entering finding. Eligibility is re-established as of the 1 st of the month in which the determination is made by the court.

¹⁷ *Minn. Stat. § 260C.201, subd. 11 (g)*, details the reasonable efforts required of the agency and to be reviewed by the court. The annual review is required for any child ordered into long-term foster care or foster care for a specified period of time under *Minn. Stat. § 260C.201, subd. 11* or *§ 260C.317, subd. 3 (d)*. The annual review must review the child’s out-of-home placement plan and the reasonable efforts of the agency to:

1. Ensure that long-term foster care continues to be the most appropriate legal arrangement for meeting the child’s need for permanency and stability or, if not, to identify and attempt to finalize another permanent placement option under this chapter that would better serve the child’s needs and best interests.
2. identify a specific long-term foster home for the child, if one has not already been identified;
3. support continued placement of the child in the identified home, if one has been identified;
4. ensure appropriate services are provided to address the physical, health, mental health, and educational needs of the child during the period of long-term foster care and also ensure appropriate services or assistance to maintain relationships with appropriate family members and the child’s community; and
5. plan for the child’s independence upon the child’s leaving long-term foster care as required under Minnesota Statutes 260C.212 subd. 1; and
6. where placement is for a specified period of time, a plan for the safe return of the child to the care of the parent.

¹⁸ See *Minn. Stat. § 260D.08* for a child in voluntary foster care for treatment, *§ 260C.201, subd. 11 (g)*, for child in long-term foster care or foster care for a specified time, and *§ 260C.317, subd. 3(c)*, for state wards in long-term foster placement.